

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTON

CONTEMPT PETITION NO. 108 OF 2003

IN

WRIT PETITION NO. 941 OF 2001

RAMESH KIMATRAI DUDHANI

2-B, Indu Park, Four Bungalows,

Versova, Andheri (W),

Mumbai 400 058.

..PETITIONER

V/S

MRS. MADHAVI R. DUDHANI

43-D/14, Manish Nagar,

Andheri (W), Mumbai 400 058.

..RESPONDENT

R.V. GOVILKAR FOR PETITIONER.

A.C. SINGH I/B D.R. SHAH FOR RESPONDENT.

CORAM : D.K. DESHMUKH, J.

DATE : 14TH FEBRUARY, 2007.

JUDGMENT

1. By this contempt petition it is alleged that in breach of the undertaking given by the Respondent, the Respondent has created a third party right in the shop. It appears that the petitioner had

applied to the Cooperative Society, for membership in respect of shop No. 11 which is the subject matter of the dispute between the petitioner and the Respondent. That application was rejected by the Society and therefore, dispute was filed before the Cooperative Court. The Cooperative Court dismissed the matter. Therefore an Appeal was filed before the Appellate Court. The Appeal was also dismissed. Against the order of the Appellate Court a writ petition was filed in this court. During the pendency of this petition, this court appointed the Court Receiver on the shop and directed the Court Receiver to appoint the Respondent as agent of the Court Receiver if she applies for the same. As a condition of the agency agreement the Respondent undertook that she will not create any third party right in respect of the said shop. The allegations of the petitioner is that the respondent in breach of the undertaking entered into a Memorandum of Understanding with a third party and permitted that party to conduct business in the shop. Copy of the Memorandum of Understanding has been produced on

record. According to the petitioner the respondent has committed breach of the undertaking given by her to the court that she will not part with the possession of the shop. Perusal of the Memorandum of Understanding shows that what was given for conducting to third party was the business in the shop. When the business is given for conducting whether it amounts to handing over possession of the shop or not which is an issue which is debatable. However there can be no debate on the allegation that the conduct of the respondent of entering into arrangement with the third party even for conducting business in the shop did have an element of acting contrary to the undertaking given. But in my opinion in the facts and circumstances and in view of the development that have taken place subsequently no further action is required to be taken against the Respondent. Learned counsel appearing for the Respondent has produced a copy of the judgement dated 20th June, 2005 delivered in Writ Petition No. 941 of 2001 of this court. Perusal of that judgement shows that so far as the shop No. 11 to which the dispute relates is concerned that shop was in the building of the

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Co-operative Society of which only the Respondent was a member. There was application given to the society for admission of the petitioner as joint member and that application was rejected by the Cooperative Society. Though it is apparent from the order of the court that so far as shop No. 11 is concerned it is only the respondent who was the member of the Co-operative Society in whose building the shop is situated. The right of the respondent to continue to be in possession of the shop was never under any cloud. As now Writ Petition No. 941 of 2001 has been dismissed and at present there is no doubt about the entitlement of the respondent to be in possession of the shop and to deal with it in any manner. In this view of the matter, in my opinion it will not be proper to take further action against the respondent. However, the fact remains while she was acting as agent of the receiver she had entered into an arrangement in relation to the business being conducted in the shop. In my opinion, therefore, imposing cost on the respondent

will serve the ends of justice. Contempt petition
is disposed of. The respondent is directed to pay

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by way of cost of this petition Rs. 5000/- to the
petitioner.

(D.K. DESHMUKH, J.)